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T.R.A. DOCKET ROOM

April 28, 2003

J. Richard Collier, Esq.  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37219

**In Re: Enforcement of Interconnection Agreement between BellSouth  
Telecommunications, Inc. and ITC^DeltaCom Communications, Inc. and  
XO Tennessee, Inc.**

02-01203

Dear Mr. Collier:

The attached Joint Motion is addressed to the Hearing Officer in the above-captioned proceeding. Since Jon Wike, the previous Hearing Officer, is no longer at the agency, please provide this Motion to whomever you designate to replace Mr. Wike.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker

*Henry Walker* @

HW/dw

Enclosure

cc: Guy Hicks

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**April 28, 2003**

**IN RE:**

**ENFORCEMENT OF  
INTERCONNECTION AGREEMENT  
BETWEEN BELLSOUTH  
TELECOMMUNICATIONS, INC. AND  
ITC^DELTACOM COMMUNICATIONS,  
INC.**

**ENFORCEMENT OF  
INTERCONNECTION AGREEMENT  
BETWEEN BELLSOUTH  
TELECOMMUNICATIONS, INC. AND  
XO TENNESSEE, INC.**

**DOCKET NO.**

**02-01203**

**JOINT MOTION TO SUSPEND PROCEDURAL SCHEDULE**

The parties to this proceeding jointly file this motion to suspend the procedural schedule pending the issuance of a written Order by the Federal Communications Commission ("FCC") in Docket No. CC 01-338(the "Triennial Review.").

This consolidated proceeding arises from complaints filed by BellSouth Telecommunications, Inc. ("BellSouth") against XO Tennessee, Inc. ("XO") and ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom"). In the complaints, BellSouth asserts that it has properly exercised its right to demand an audit of extended enhanced loops ("EELs") utilized by the two carriers. The purpose of the audit requests is to determine whether those EELs are being used to carry a "significant amount" of local telephone traffic. The FCC has defined a "significant amount" in several ways, giving the CLECs three different "safe harbors" *i.e.*, ways

of demonstrating that the EEL is, in fact, carrying significant local traffic. BellSouth's audits will presumably determine whether the EELs used by XO and DeltaCom fall within one of the safe harbors. The parties have each issued extensive discovery requests based on the assumption that these safe harbor provisions as well as the FCC's other orders addressing these issues are still in effect.

On February 20, 2003, however, the FCC announced that it had changed the rules on the use of EELs and the safe harbor provisions. In a press release the FCC summarized these changes:

Service Eligibility – Service eligibility criteria apply to all requests for newly-provisioned high-capacity EELs and for all requests to convert existing circuits of combinations of high-capacity special access channel termination and transport services. These criteria include architectural safeguards to prevent gaming.

Certification – Each carrier must certify in writing to the incumbent LEC that it satisfies the qualifying service eligibility criteria for each high-capacity EEL circuit.

Auditing – Incumbent LECs may obtain and pay for an independent auditor to audit compliance with the qualifying service eligibility criteria for the high-capacity EELs. The incumbent LEC may not initiate more than one audit annually.

The FCC has not yet released its written order explaining in detail how and to what extent the safe harbor provisions are being replaced by “architectural safeguards,” what safeguards CLECs will be required to demonstrate and to what extent, if any, these changes will apply retroactively. It is not yet clear what effect the Order may have on this proceeding. The written Order may also speak to whether BellSouth is required to demonstrate specific “concerns” in order to justify an audit or whether the carrier can require an audit without any stated justification. In short, the parties believe the Order could directly affect the position of the parties in this proceeding.

All of these issues are central to the dispute in this litigation. It makes little sense to continue with discovery and testimony or to invest further TRA resources until the FCC order has been issued. Large portions of the current discovery requests could no longer be relevant, and it is likely that parties may seek another round of discovery to address the FCC's revised safe harbor rules and audit criteria. Rather than continuing efforts that are likely to be wasted, it makes more sense to put the current schedule on hold until after the Order is issued and then allow the parties the opportunity to re-write their discovery questions in light of the FCC's decision.

In an Order issued April 25, 2003, the Hearing Officer, Jonathan Wike, declined to suspend the procedural schedule merely on the basis of "speculation" regarding the contents of the FCC's written Order. The Hearing Officer added, however, that if "the parties agree that discovery should be suspended pending release of the FCC's Order, the parties should file a joint motion to suspend the procedural schedule set forth below." Order at 5.

The parties have agreed to do just that. The parties therefore jointly ask that the current procedural schedule be suspended pending release of the FCC's Triennial Review Order.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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